

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**S.L., a minor, by and through her  
parent and legal guardian D.L.**

**Plaintiff,**

**v.**

**Civil Action No. 3:18-CV-162  
Honorable Gina M. Groh**

**CITY HOSPITAL, INC. d/b/a BERKELEY MEDICAL CENTER,  
A subsidiary of WEST VIRGINIA UNIVERSITY  
HOSPITALS-EAST, INC., d/b/a  
WV UNIVERSITY HEALTHCARE;  
BRANDT WILLIAMSON, M.D.;  
MISTY HUNSADER, PA-C;  
SMOKY MOUNTAIN EMERGENCY  
SERVICES, INC.; and  
HEALTH CARE ALLIANCE, INC.,**

**Defendants.**

**CITY HOSPITAL, INC. d/b/a BERKELEY MEDICAL CENTER’S MOTION TO  
DISMISS THE FIRST AND RELATED PARTS OF THE FOURTH CAUSE OF ACTION  
OF PLAINTIFF’S THIRD AMENDED COMPLAINT**

**NOW COMES** City Hospital, Inc. d/b/a Berkeley Medical Center, (“BMC”), by and through its counsel, and respectfully moves this Honorable Court to dismiss the First Cause and related parts of the Fourth Cause of Action of Plaintiff’s Third Amended Complaint because Plaintiff lacks “the irreducible constitutional minimum of standing.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992).

While “[a] plaintiff may [] obtain injunctive relief in appropriate cases under Title III” of the Americans with Disabilities Act, *Proctor v. Prince George’s Hosp. Ctr.*, 32 F. Supp. 2d 820, 824 (D. Md. 1998); 42 U.S.C. 12182(a), she cannot do so without establishing an “injury in fact.”

*Lujan*, 504 U.S. at 560. Without an injury in fact that is “actual or imminent,” Plaintiff fails to meet her burden to “establish[] [she has] standing to raise the claims asserted” *Aikins v. St. Helena Hosp.*, 843 F. Supp. 1329, 1333 (N.D. Cal. 1994). Without standing, Plaintiff’s claim must be dismissed. (“Article III of the United States Constitution requires that those who seek to invoke the power of the federal courts must allege an actual case or controversy.” *Schroedel v. New York Univ. Med. Ctr.*, 885 F. Supp. 594, 597 (S.D.N.Y. 1995)).

Because this Honorable Court already determined that Plaintiff’s Complaint failed to meet the standing requirement [ECF 143, p. 9-11], and because Federal Rule of Civil Procedure 12(h)(3) requires the Court to dismiss an action at any time it determines that it lacks subject matter jurisdiction, BMC moves this court for dismissal of Plaintiff’s First Cause of Action and the related parts of the Fourth Cause of Action.

The grounds for this Motion are more fully set forth in the attached Memorandum of Law. Respectfully submitted this 24<sup>th</sup> day of February, 2021.

**CITY HOSPITAL, INC. d/b/a BERKELEY MEDICAL CENTER, A subsidiary of WEST VIRGINIA UNIVERSITY HOSPITALS-EAST, INC., d/b/a WV UNIVERSITY HEALTHCARE**

**By Counsel**

/s/ Joshua Boggs

Christine S. Vaglianti (W. Va. State Bar ID #4987)

Joshua K. Boggs (W. Va. State Bar ID #10096)

Lauren T. Krupica (W. Va. State Bar ID #11719)

**WEST VIRGINIA UNITED HEALTH SYSTEM, INC.**

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**Defendants.**

**CERTIFICATE OF SERVICE**

I, Joshua K. Boggs, do hereby certify that I have *electronically filed* and caused to be served this 24th day of February, 2021, the foregoing “**CITY HOSPITAL, INC. d/b/a BERKELEY MEDICAL CENTER’S MOTION TO DISMISS THE FIRST AND RELATED PARTS OF THE FOURTH CAUSE OF ACTION OF PLAINTIFF’S THIRD AMENDED COMPLAINT**” via the United States District Court for the Northern District of West Virginia’s CM/ECF:

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Services and Health Care Alliance, Inc.*

/s/ Joshua Boggs

Joshua K. Boggs (W. Va. State Bar No. 10096)